IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No.2l94 of 2005

Yashwant D Sonawane ... .Petitioner

vs

Kalyan Dombivli Mun Corpn and ors...Respondents

Mr N V Bandiwadekar for petitioner

M A S Rao for respondents

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 28.6.2005

P.C:

. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. The petitioner was appointed as a Junior Engineer (Electrical) in the respondent no.l Corporation with effect from l.7.l989. He was promoted to the post of Dy Engineer on temporary basis with effect from 5.l0.l996 and has been working in the said post since then. It appears that several new posts in Class I, Class II, Class III cadre have been sanctioned in the establishment of the lst respondents vide Government Resolution dated 9.l2.l999. The General Body of the Corporation in its meeting held on 26.6.200l passed resolution No. 29 to frame recruitment rules in

respect of the various posts on the establishment of the Corporation including Executive Engineer (Electricial/Mechanical). As per the recruitment rules framed pursuant to the Resolution the candidates having worked for minimum period of 5 years in the post of Dy Engineer (Electrical/ Mechanical) are eligible for promotino to the post of Executive Engineer(Electrical/Mechanical) on seniority cum merit basis. The petitioner filed Writ Petition No. 405l of 2004 claiming promotion to the post of Executive Engineer (Electrical/Mechanical) . That writ petition came to be disposed of by the Division Bench vide order dated 28.l.2005 directing the Corporation to consider the petitioner for promotion to the post of Executive Engineer (Electrical/Mechanical) in the post reserved for S.T. The Court also observed that in the event of any enquiry is pending against the petitioner the Corporation will be entitled to follow sealed cover procedure.

3. Pursuant to the order of this court the Department Promotion Committee (DPC) was constituted on l5.3.2005 and the case of the petitioner was placed before the DPC . By letter dated 22.3.2005 the Dy Commissioner GAD informed

the petitioner that the DPC has taken a unanimous decision to keep the decision of the petitioner's promotion in a sealed cover since the departmental inquiry is proposed against the petitioner in respect of the misconduct said to have been committed by the petitinoer while working in Electrical Division. Legality and propriety of this letter dated 22.3.2005 is questioned in this petition under Article 226 of the Constitution.

4. The short question that falls for our consideration is whether the DPC was right in following the sealed cover procedure in the instant case. In the case of Union of India vs K V Jankiraman, AIR l99l SC 20l0 the Supreme Court has categorically held that if on the date on which the name of a person is considered by the DPC for promotion to a higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable,has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the DPC can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been

initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority.

5. In Bank of India and anr vs Degla Suryanarayana, l999 SCC (L&S) l036 the Court observed as under:

> "However, the matter as to promotion stands on a different footing and the judgemnts of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc, but disciplinary/ criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit or promotion, increment etc are kept in a sealed cover to be opened after the procedings in question are over (see Union of India v K V Jankiraman SCC at pp ll4-ll5: AIR at p 20l3). As on l.l.l986 the only procedings pending against the respondent were the criminal proceedings which ended in acquital of the respondent

> wiping out with retrospective efffect the adverse consequences, if any, flowing from the pendency thereof. The departmental inquiry proceedings were initiated with the delivery of the chargesheet on 3.l2.l999. In the year l986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental iquiry proceedings pending against the respondent. The sealed cover procedure could not have been rsorted to nor could the promotion in the year l986-87 be withheld for the DE proceedings initiated at the fag end of the year l99l. The High Court was therefiore right in directing the promotino to be given effect to to whicsh tmhe respondent was found entitled as on l.l.l986. In the facts and circumstacnes of the case, the order of punishment made in the year l995 cannot deprive the respondent of the benefit of the promotion earned on l.l.l986".

Similar is the view taken in Delhi Jal Board v Mahinder Singh (2000)7 SCC 2l0 and DPC Food Corpn of Indianvs Abhay Ram (2002) l0 SCC 455.

6. We shall now examine the facts of the present case in the light of the above legal position.It appears that sometime in November 200l petitioner was served with a memo of chargesheet on account of causing loss to the Municipal Corporation. The petitioner challenged the departmental proceedings in Writ Petition No.3l05 of 2005. By judgment and order dated 2l.3.2005 the Division Bench quashed the proceedings initiated against the petitioner on the ground that the Municipal Commissioner has no authority to initiate and conduct departmental enquiry against the petitioner under the provisions of the BMC Act read with the provisions of the Maharashtra Civil Service (Discipline and Appeal)Rules, l979. The Court held that the Corporation is the appropriate authority which can take action against the petitioner.It appears that after the departmental proceedings were quashed a proposal was forwarded to the General Body to initiate departmental proceedings against the petitioner. However, the learned counsel for the respondent nos. l and 2 fairly stated before us that no inquiry has been initiated against the petitioner nor any suspension was ordered against him till date. Thus the petitioner was neither

under suspension nor was a chargesheet issued against him when the DPC held its proceedings. Therefore the sealed cover procedure could not have been resorted to by the DPC. We therefore quash and set aside the impugned communication dated 22.3.2005 and direct the DPC to forthwith open the sealed cover and communicate its decision to the Commissioner of the Corporation as also to the petitioner and thereafter the Commissioner shall consider the case of the petitioner for promotion and pass appropriate orders within 8 weeks. Rule is accordingly made absolute with no order as to costs.